1948 File No. Misc-A 48 Part III

Legal DEPARTMENT

A BRANCH

K

Subject.— Miscellaneous Correspondence dealt with 'A' Branch

Pkt 2315

(For the previous papers pl. see pt. I & II)

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Std. Sectt. Slip 24 B e.

Part III

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C O N T E N T S.

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Cr. No.	D.I./D.No.	Subject.	Pages.
		Miscellaneous correspondence dealt with in 'A' Branch.	
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Appeal No. 10 of 1948.

Suit No. 3380 of 1947.

Coram: C.J.
and
Rajendragadkar J.

Appeal from judgment of Hon. Mr. J.

D.N. Cooper and another ..... Appellants.
Defendants.

Versus

Shivram Ganaji Chhota and another ..... Respondents
Plaintiffs.

The Advocate General and Mr. H. R. Parpia with Mr. S.T. Karani for the Appellants.

Mr. K.L. Manchala and Mr. K.J. Khandalawala for the Respondents.

Coram: Chagla, C.J., and Rajendragadkar, J.
19th July 1948.

Oral Judgment (Per Chagla, C.J.):

This is an appeal from the judgment of Mr. Justice Dave, and the question that arises for determination is whether the plaintiffs who are the landlords are entitled to eject their tenants, the defendants. The defendants were the monthly tenants and on the 23rd day of July 1947 they occupied their tenement. The plaintiffs gave a notice to the defendants terminating the tenancy.

The first contention that has been raised by Mr. Parpia on behalf of the tenants is that the notice to terminate was not a valid notice inasmuch as only a month's notice was given, whereas the agreement between the parties required that the notice should be of two months' duration. The agreement between the parties provides that the lessors shall let to the lessees the tenement in question their use and

and occupation on a monthly tenancy, and then states the rent which has got to be paid. Clause 9 of the lease provides that either party desiring to terminate the tenancy at or after the expiration of the aforesaid period wasto give two months previous notice ending with the ~~calendar~~ calender month. Now, it is clear that this particular clause was intended o operate only if the tenancy was for a fixed period. The agreement to lease is in a prined form, and the print with regard to clause 1 which sets out the period of the tenancy and the rent clearly shows that a tenancy for a fixed period was intended and the ~~blank~~ blank was to be filled in to show what was the period of the tenancy

As this particular teancy was a monthly tenancy, the print in clause 1 is struck off and a typied statement is incorporated which states that the tenancy between the parties is not a tenancy for a fix period, but a monthly, tenancy. It is, therefore clear that clause 9 was abrogated as soon as the parties agrees that tenancy was to be a monthly tenancy. It is impossible to contend that although the tenancy was a monthly tenancy, the notice that was to be given was a notice of two months. The very definition of a monthly tenancy is that it is a tenancy for an indeterminate period which can be determined by a month's notice.

But the more susbsantial point which has been urged both my Mr. Parpia and by the Advocate General is whether the tenant continues to be protected under the Bombay Rent Restriction Act, nd whether Mr. Justice Deasi was in error when he passed a decree for ejectment against the tenants. One of the the terms of the terms of the tenancy agreement is that the lessee shall not sub-let or part with the possession of the demises premises or any part thereof to any other party or parties without the provios, written consent of the lessors and subject to all the convenants and conditions contained in the agreement.

Now, it is not disputed in this case that the tenants have sublet their premises ~~without the consent~~ without the previous written consent of the landlords; and Mr. Justice Dodd held that in doing so the tenants had failed to perform ~~his~~ the conditions of their tenancy, and, therefore they were not protected under s.9 of Act VII of 1944. As against this, the Advocate General contends that

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that under s.10 the tenant is entitled to sublet, notwithstanding the fact that the tenancy agreement does not permit him to do without the previous consent of the landlords and that an additional right is given to the tenant, the exercise of which protects him for ejectment, although in doing so he may commit a breach of the tenancy agreement. Now, s.10 permits a tenant to sublet any portion of his premises to a sub-tenant provided he satisfies two conditions: He must forthwith intimate in writing to his landlord the fact of his having so sub-let the premises and also he must inform the land lord as to the rent at which the premises have been sub-let. And this right is given to the tenant notwithstanding any thing to the contrary in any law for the time being in force. The law with regard to sub-letting is contained in s. 108 of the Transfer of Property Act, and that section deals with the rights and liabilities of lessor and lessee and in sub-clause(j) the lessee is given the right to transfer absolutely by the way of mortgage or sub-lease the whole or any part of his interest in the property and any transferee of such interest or any part may again transfer it. Now, it is to be noted that the right given to the lessee under sub-clause(j) is an unrestricted right. It is not conditioned by either the lessee having to inform the lessor that he has sub-let the premises or the rent at which he has done so. But the whole of s. 108 is subject to this important proviso that s.108 only applied provided there is no contract or local usage to the contrary, which means that the law as embodied in s. 108 applies to lessors and lessees unless they choose to make their own as it were and embody it in their own personal contract. If the lessor and lessee choose to make a contract and lay down their rights and obligations, then and in

says that the law incorporated in s.108 shall not apply to the lessor and lessee, but what will apply to them is their own contract and they would be governed by the conditions of that contract.

Now, the Advocate General urges hat s.10 gives the right to a tenant to sub-let even though in the contract between him and his landlord such a right given to him. In other words, according to the Advocate General s. 10 deals with not only the law as embodied in s. 108 but also with a contract arrived at between the landlord and the tenant. According to him we must read s.10 to mean not only notwithstanding that anything to the ~~xxtxx~~ contrary in any law for the time being in ~~xx~~ force, but also notithstanding anything to the contrary in any contract between the parties Now, it is a fundamental canon of construction that a Court of Law would not permit the sanctity of obligation or of contracts to be ~~xxxxx~~ interfered with unless the statute in express terms permits a violation of that sanctity. In these case before us, not only there are no express words in s.10 but what is important and significant is that in s.9 of the sanctity of contr ct between the landlord and the tenant fully respected and given effect to. Because the very basis of the tenant's protection under s.9 (1) is that he must pay rent to the fullx extent allowable by the Act and he must perform the conditions of his tenancy. If one of the conditions of the tenancy is tha he shall not sub-let without the previous consent of the landlord, then s.9(1) says that the tenant must perform that condition if he wishes to avai himself of th protection given to him under that sub-section. Now, according to the Advocate General s. 10 overrides s.9 and in effect lays down that open to the tenant to violate at least one term of his tenancy. The Advocate General concedes that there is a repugnancy --- as between s.9 a

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s. 9 and s/. 10, and he is driven to the position that the only way that repugnancy can be reconciled is by giving to s/.10 the effect of overriding s.9 at least in one material particular. In our opinion that is not the proper way to construe section 9 and 10. Again, the ordinary canon of construction is to the that when there are two sections in the statute, the Court has and reconcile both the section, unless a subsequent section in terms provides that what is contained in that section is to operate as a proviso to the earlier section or it is to be considered as overriding the provisions of the earlier section. s.10 does not state that what is contained in that section is to operate notwithstanding what is stated contained in s. 9, and, therefore the only way to reconcile s. 9 and 10 does not deal with the law as it exists obtains between the landlords and tenant, and provided for a tenant being able to sub-let only on certain terms even though those terms may be different from or contrary to the law regulating the relations of landlord and tenant. It is not as if s. 10 is wholly redundant. The Advocate General says that a tenant had already a right to sub-let under s. 108 if that right was merely to be recognised there was no need to enact s.10; But s. 10 restricts the right of the tenant to sub-let under the ordinary law, As we have already pointed out whereas s.108 (j) the right of the tenant to sub-let was unrestricted, under s.10 that right is circumscribed by two conditions. (1) that he must intimate in writing to the landlord the fact of his having sub-let the premises, and (2) he must inform him as to the rent at which the premises have been sub-let.

The history of the legislation with regard to the right of the tenant to sub-let is interesting and throws considerable

light on the construction we must put upon s.10 . The Bombay Rent Restriction Order of 1942 was amended by a Notification dated the 13th September 1948 which made a tenant liable to be ejected if he sub-let the premises without the written permissi of his landlord after the date of that notification.

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Therefore this order took away the right of the tenant which he had under the ordinary law of sub-letting without the permission of his landlord in the absence of any contract to the contrary, and it went to the length of penalizing such sub-letting by making the tenant liable to be ejected.

Then came the Notification dated the 6th January 1944 which further amended the Bombay Rent Restriction Order of 1943 as that amendment was practically in the same terms as s. 10 of the Act of 1944, although the Notification of the 6th January 1944 did not render the tenant liable to be ejected if he sub-let the premises without intimating in writing to his landlord the fact of his having so sub-let and also the rent at which they were sub-let. Therefore, the law was rendered less drastic so far as the tenant was concerned. He was not compelled to take the permission of his landlord in the case where there was no such term in the contract between them, but he had to comply with the two conditions to which we have referred. Now, according to the Advocate General the tendency of the legislature is to protect the tenant to such an extent that the legislature intended that he should be given the right to sub-let even though he had no such right under the contract between him and his landlord, and the Advocate General wants us to construe s.10 in order to give effect to the tendency of such legislation which is intended for the protection of tenants. Courts may lay and not deter the legislature from carrying out its object so long as it is possible to do so. But if the legislature fails to carry out its object by giving proper expression to it, by using adequate language for the same purpose, the Court cannot violate the canons of construction merely for the purpose of assisting the legislature for a supposed object which it might have. But in the case it is not even clear that in the tendency of modern legislation and the legislature intended to give the tenants an unrestricted right to sub-let. Because when we come to the latest Act, viz. Act LVII of 1947, we find that s.15 of

s. 15 of that Act contains a complete prohibition against the tenant to sub-let, and s.13 goes to the length of providing the land-lord with an additional ground for

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ditional ground for ejecting the tenant if the tenant sub/lets
n premises. I therefore if one is entitled to consider the
ject of the legislature and the tendency of legislation, the
stect Act seems intended to be against the right of the tenant
o sub/let, rather than in favour of giving the tenant an
nrestricted right to sub-let, even contrary to the provisions
contained in the contract between the landlord and the tenant.

One citation has also been drawn to various judgment of
-le Judges which have considered this question. Mr. Justice
Boyajee had to consider the construction of s.10 in suit No.
937 of 1944 (Lemuel Frank V. Solomon A Zulaikha and another)
but the view of the learned Judge was obiter because that he
ultimately held was that there was a complete assignment of t
premises and not-sub-letting, and therefore, s.10 had no
application. The view of Mr. Justice Bhagwati also in suit No
1933 of 1945 on the construction of s. 10 were also obiter I
also happened to have expressed certain views in a case that
came before me when I was sitting on the Original Side in suit
No. 962 of 1944 (Sulaman Haji Ahmed Omer Vs. J.E. Tattersall)
Mr. Tandoliar (as he then was) argued at the Bar that the
tenant was not protected because he had not sub-let a part of
the premises but he had sub-let the whole of the premises and
in doing so he had deprived himself of the protection afforde
by s.10 of the Act. I took the view that s. 10 referred to
sub-letting not only a part but the whole of the premises. I
it must be admitted that it was opposed by Mr. Tandoliar that
s. 10 did apply although there was a condition in the lease
which required the previous consent of the landlord before t
tenant could sub-let the premises, and in coming to the
conclusion that the tenant was protected and the plaintif
was not entitled to eject the defendant I took the view tha
s.10 gave the protection to the tenant notwithstanding any
contract to the contrary. But the point was not even as argu
and as we have just remarked by judgment proceeded on the co
nession made by Mr. Tandoliar.

The same point came for consideration before Mr. Justice ~~Weston~~ Weston in Civil Revision Application No. 109 of 1948 (Piarelal Talwar V. Pestonji Koorwaji Sethana and others)

There also the learned Judge's observations were obiter, although Mr. Justice Weston took the view which we are now taking and which Mr. Justice Desai in the Court below took that the expression notwithstanding any law to the contrary" cannot be read to mean also notwithstanding any contract to the contrary.

The result therefore is that inasmuch as the tenant has sub-let the premises without the previous consent of the landlord he is not protected under s.9 . He has not performed one of the conditions of his tenancy. We therefore agree with the view taken by Mr. Justice Desai who passed a decree for ejectment in favour of the plaintiffs. The result therefore would be that the appeal fails and must be dismissed with costs.

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